

REMARKS

Claims 1-16 are pending in this application. By this Amendment, claims 1, 6, 9-12 and 14-16 are amended and claims 2, 4 and 5 are canceled. Support for the amendments to the claims may be found, for example, in the specification at page 3, lines 19-21. No new matter is added. In view of the foregoing amendments and the following remarks, reconsideration and allowance are respectfully requested.

I. Amendments to Claims 9-12, 14 and 15

By this Amendment, claims 9-12, 14 and 15 are amended to better conform to U.S. practice. No new matter is added.

III. Response to Claim Rejections Based on 35 U.S.C. §103

The Office Action rejects claims 1-16 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,854,011 to Chen et al. (hereinafter "Chen") in view of Cooke et al. ((1999) Appl. Env. Microbial. 65(2): 807-812) (hereinafter "Cooke"), Kardos et al. ((2000) Toxicological Sciences 58: 118-126), Sondegaard et al. ((2001) Chem. Eng. 7(11): 2324-2331), Merrer et al. ((1997) Bioorg. Med. Chem. 5(3): 519-533) and Gilbert et al. (WO 2002/40706). By this Amendment, claims 2, 4 and 5 are canceled, rendering their rejection moot. As to the remaining claims, Applicants respectfully traverse the rejection.

Without conceding the propriety of the rejection, claims 1 and 16 are amended to more clearly recite various novel features, with particular attention to the Examiner's comments. Specifically, claims 1 and 16 are amended to recite detecting and/or identifying a "bacterium." Chen does not teach detecting and/or identifying a "bacterium," as recited in claims 1 and 16.

Instead, Chen discloses "a method and medium for measuring yeast and/or mold concentrations in a test sample." See Chen, col. 8, lines 21-22. Specifically, Chen discloses a

particular substrate that would be hydrolyzed by a ubiquitous enzyme in most yeasts and molds. See Chen, col. 3, lines 37-41, reproduced below for convenience.

Accordingly, a medium is disclosed for detecting yeasts and molds in a biological sample. In certain preferred embodiments, the medium provides effective results by employing a newly identified ubiquitous enzyme in yeasts and molds: aminopeptidase.

Further, Chen teaches a medium that inhibits the growth of bacterium, so as to exclusively promote the growth of yeast and mold. See Chen, col. 7, lines 28-38, reproduced below for convenience (emphasis added).

The term "yeast and mold specific medium" means a medium which allows growth of yeasts and molds and allows for substantially less growth of any other component of a biological matrix. This term includes media which contain one or more antibiotics specific for inhibiting growth of heterotrophic bacteria but not yeasts and molds, and it includes media which alternatively or additionally contain one or more enzyme substrates which are preferably not hydrolyzed by enzymes from microorganisms other than the yeast or mold target microbe(s) to any substantial degree.

Accordingly, claims 1 and 16 would not have been rendered obvious over Chen and the other applied references because Chen discloses a medium that intentionally will not support the presence of bacterium.

Therefore, the proposed combination of Chen and the other applied references is improper because the combination renders Chen unsatisfactory for its intended purpose of measuring yeast and mold concentration due to the interference provided by enzymes produced by bacteria. See MPEP §2143.01(V). Furthermore, the proposed combination of Chen and the other applied references is improper because the proposed combination changes the principle of operation of Chen by requiring the exclusion of one or more antibiotics specific for inhibiting growth of heterotrophic bacteria. MPEP §2143.01(VI). Accordingly,

claims 1 and 16 would not have been obvious over Chen and the other applied references because there is no reason for one of ordinary skill in the art to make such a combination.

Claims 1 and 16 would not have been rendered obvious by Chen and the other applied references. Claims 3 and 6-15 variously depend from claim 1 and, thus, would also not have been rendered obvious by Chen and the other applied references. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

III. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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